

June 9, 2004

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

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REPORT AND DECISION ON PROPOSED PLAT ALTERATION

SUBJECT: Department of Development and Environmental Services File No. **L03ALT04**
Proposed Ordinance No. **2004-0167**

JERRY'S PLACE
Plat Alteration Application

Location: South of Southeast 204th Way (aka Southwest Lake Young's Way)

Applicant: **Novastar Development Inc.**
18215 – 72nd Avenue South
Kent, Washington 98032
Telephone: (425) 251-6222

King County: Department of Development and Environmental Services, *represented by*
Kim Claussen
900 Oakesdale Avenue Southwest
Renton, Washington 98055-1219
Telephone: (206) 296-7167
Facsimile: (206) 296-8686

SUMMARY OF RECOMMENDATIONS:

Department's Preliminary Recommendation:	Grant the application, subject to conditions
Department's Final Recommendation:	Grant the application, subject to conditions
Examiner's Decision:	Grant the application, subject to conditions

EXAMINER PROCEEDINGS:

Hearing Opened:	May 18, 2004
Hearing Record Closed:	May 27, 2004

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes.
A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

FINDINGS OF FACT: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:

1. **General Information:**

Developer: Novastar Development Inc.
18215 72nd Avenue South
Kent, WA 98032
425-251-6222

Engineer: Barghausen Consulting Engineers
18215 - 72nd Avenue South
Kent, WA 98032
425-251-6222

STR: 3-22-5

Location: The site lies south of SE 204th Way (aka SE Lake Youngs Way) between Soos Creek Park (west boundary) and 140th Avenue SE

Zoning: R-6 PSO
Acreage: .22 acres
Number of Lots: 4 lots
Density: 5 units per acre for urban area for the entire plat
Lot Size: Approximately 2,460 sq. feet
Proposed Use: Attached dwellings (i.e. townhouse units)
Sewage Disposal: Soos Creek Water & Sewer
Water Supply: Soos Creek Water & Sewer
Fire District: Fire District No. 37
School District: Kent School District No. 415
Complete Application Date: December 18, 2003

2. Except as modified herein, the facts set forth in the King County Land Use Services Division's preliminary report to the King County Hearing Examiner for the May 18, 2004 public hearing are found to be correct and are incorporated herein by reference. The LUSD staff recommends approval of the application, subject to conditions.
3. Novastar Development, Inc. has filed a plat alteration application pursuant to KCC 19A.16.070 to amend the final plat of Jerry's Place recorded on June 25, 2002. The application seeks to remove the development restriction on Tract C, plat four lots thereon for attached dwellings, extend the internal roadway on Tract D to serve the Tract C lots, and provide for additional on-site parking within the existing Tract D road eyebrow. The public hearing held on May 18, 2004 was continued administratively to allow the Applicant and staff to submit further materials relating to the Applicant's request to reduce the building setback line applicable to proposed lot 18.

4. The plat alteration request was triggered by a recent amendment to Comprehensive Plan Policy E-168 wherein the King County Council deleted habitat for the red-tailed hawk from its list of designated wildlife habitat conservation areas within the Urban Growth Area. The creation of Tract C and its development restriction were required by a SEPA condition appended to the preliminary approval for Jerry's Place to protect a red-tailed hawk nest lying approximately 250 feet south of platted lot 14. A reissued determination of non-significance dated March 19, 2004 for the plat alteration proposal deleted the red-trailed hawk nest protection requirement.
5. Staff testified that the new parking spaces proposed for the eyebrow within Tract D do not conform to the requirements of the King County Road Standards. Accordingly, approval of these parking spaces, or some variation thereof, will require the issuance of a road variance by the County Road Engineer.
6. The Applicant also seeks to extend Tract C further southward toward a sensitive areas tract established by the final plat of Jerry's Place which contains a large wetland and its buffer. While the buffer width south of Tract C in some places exceeds the 50 foot regulatory standard, the increased dimensional area of the buffer is the product of buffer averaging to compensate for buffer width reductions elsewhere within the plat. Tom Barghausen's December 16, 2003 letter to DDES accompanying the plat alteration application describes a proposal to extend the southeast line of Tract C further into Tract A as a "minor modification of the boundary line between Tract C and Tract A to provide additional building separation for construction and aesthetic purposes". As later elaborated by Mr. Barghausen, this proposed expansion of Tract C toward the sensitive areas buffer and resultant reduction of the building setback line also will facilitate connecting the new Tract C units to an existing sewer line stub. No formal variance application has been submitted by the Applicant pursuant to KCC 20.20.040, nor have application notices been provided as required KCC 20.20.060.

CONCLUSIONS:

1. Ordinance 14775 adopted by the King County Council effective October 24, 2003 modified Comprehensive Plan Policy E-168 by deleting habitat for the red-tailed hawk from its list of designated fish and wildlife habitat conservation areas within the Urban Growth Area. The deletion of the red-tailed hawk nest protective area condition required for the final plat of Jerry's Place is consistent with Comprehensive Plan Policy E-168 as amended.
2. Reduction of the building setback line required from sensitive areas buffers under KCC 21A.24.200 necessitates a variance issued pursuant to the standards stated at KCC 21A.44.030. Because the Applicant has not filed a formal variance application as required at KCC 20.20.040, we need not reach the question of whether a decision on the variance application could be consolidated with the plat alteration hearing process. In the absence of an approved variance from sensitive areas requirements, development pursuant to the plat alteration must be restricted to Tracts C and D established within the final plat of Jerry's Place.
3. If approved subject to the conditions imposed below, the proposed plat alteration makes appropriate provision for the public health, safety and welfare; serves the public use and interest; and meets the requirements of RCW 58.17.110.

4. The conditions of approval imposed herein, including dedications and easements, will provide improvements that promote legitimate public purposes, are necessary to serve the plat alteration and are proportional to its impacts; are required to make the proposed plat alteration reasonably compatible with the environment; and will carry out applicable state laws and regulations and the laws, policies and objectives of King County.

DECISION:

The plat alteration application for Jerry's Place, as revised and received on March 18, 2004, is GRANTED, subject to the following conditions of final plat approval:

1. Compliance with all platting provisions of Title 19 of the King County Code.
2. All persons having an ownership interest in the subject property shall sign on the face of the final plat a dedication that includes the language set forth in King County Council Motion No. 5952.
3. The plat shall comply with the base density and minimum density requirements of the R-6 zone classification (urban). All lots shall meet the minimum dimensional requirements of the R-6 zone classification or shall be as shown on the face of the approved preliminary plat, whichever is larger, except that minor revisions to the plat which do not result in substantial changes may be approved at the discretion of the Department of Development and Environmental Services.
4. All construction and upgrading of public and private roads shall be done in accordance with the King County Road Standards established and adopted by Ordinance No. 11187, as amended (1993 KCRS).
5. The applicant must obtain the approval of the King County Fire Protection Engineer certifying the adequacy of the fire hydrant, water main, and fire flow to meet the standards of Chapter 17.08 of the King County Code.
6. Final plat approval shall require full compliance with the drainage provisions set forth in King County Code 9.04. Compliance may result in reducing the number and/or location of lots as shown on the preliminary approved plat. Preliminary review has identified the following conditions of approval which represent portions of the drainage requirements. All other applicable requirements in KCC 9.04 and the Surface Water Design Manual (SWDM) must also be satisfied during engineering and final review.
 - a. Drainage plans and analysis shall comply with the 1998 King County Surface Water Design Manual and applicable updates adopted by King County. DDES approval of the drainage and roadway plans is required prior to any construction. Revised Engineering Plans and/or change order(s) shall be submitted to DDES for review and approval.
 - b. Current standard plan notes and ESC notes, as established by DDES Engineering Review, shall be shown on the engineering plans.
 - c. The following note shall be shown on the final recorded plat:

All building downspouts, footing drains, and drains from all impervious surfaces such as patios and driveways shall be connected to the permanent storm drain outlet as shown on the approved construction drawings # _____ on file with DDES and/or the King County Department of Transportation. This plan shall be submitted with the application of any building permit. All connections of the drains must be constructed and approved prior to the final building inspection approval. For those lots that are designated for individual lot infiltration systems, the systems shall be constructed at the time of the building permit and shall comply with plans on file."

- d. King County Code 16.82.150D requires seasonal limitations for construction within the Soos Creek Community Planning Area. The applicant's engineering plans and construction procedures shall demonstrate compliance with the applicable code requirements.
7. The proposed subdivision shall comply with the 1993 King County Road Standards (KCRS) including the following requirements:
 - a. During preliminary review the applicant submitted a road variance application (File No. L00V0002), regarding a request for a private road for greater than 16 lots on a private road and a private gate. The final road improvements shall comply with any required conditions of variance approval.
 - b. Tract D, improved as an urban minor access road.
 - c. Modifications to the above road conditions may be considered by King County pursuant to the variance procedures in KCRS 1.08.
 8. All utilities within proposed rights-of-way must be included within a franchise approved by the King County Council prior to final plat recording.
 9. The applicant or subsequent owner shall comply with King County Code 14.75, Mitigation Payment System (MPS), by paying the required MPS fee and administration fee as determined by the applicable fee ordinance. The applicant has the option to either: (1) pay the MPS fee at final plat recording, or (2) pay the MPS fee at the time of building permit issuance. If the first option is chosen, the fee paid shall be the fee in effect at the time of plat application and a note shall be placed on the face of the plat that reads, "All fees required by King County Code 14.75, Mitigation Payment System (MPS), have been paid." If the second option is chosen, the fee paid shall be the amount in effect as of the date of building permit application.
 10. Lots within this subdivision are subject to King County Code 21A.43, which imposes impact fees to fund school system improvements needed to serve new development. As a condition of final approval, fifty percent (50%) of the impact fees due for the plat shall be assessed and collected immediately prior to recording, using the fee schedules in effect when the plat receives final approval. The balance of the assessed fee shall be allocated evenly to the dwelling units in the plat and shall be collected prior to building permit issuance.
 11. The additional lots shall be incorporated into the existing homeowners' association or other workable organization to be established to the satisfaction of DDES which provides for the

ownership and continued maintenance of the recreation, and/or sensitive area tract(s), and on-site roads.

12. If the red-tailed hawks are actively using the nest south of the site at the time of construction, the Applicant shall notify the Washington State Department of Fish and Wildlife and comply with any Washington State regulations protecting the red-tailed hawks in effect and applicable to the property.
13. No construction shall occur outside the boundaries of Tracts C and D established within the final plat for Jerry's Place recorded June 25, 2002, unless a variance from sensitive areas buffer and/or setback requirements is requested from DDES and granted. Compliance with this condition may require the Applicant to revise the current development proposal for Tracts C and D.

ORDERED this 9th day of June, 2004.

Stafford L. Smith
King County Hearing Examiner

TRANSMITTED this 9th day of June, 2004, to the following parties and interested persons:

Tom Barghausen
Barghausen Consulting Engineers
18215 72nd Avenue S
Kent WA 98032

Wayne Potter
Novastar Dev. Inc.
18215 - 72nd Ave. S.
Kent WA 98032

Seattle KC Health Dept.
E. Dist. Environ. Health
14350 SE Eastgate Way
Bellevue WA 98007

Greg Borba
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MS OAK-DE-0100

Laura Casey
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Wetland Review
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Kim Claussen
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Current Planning
MS OAK-DE-0100

Carol Rogers
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Steve Townsend
DDES/LUSD
Land Use Inspections
MS OAK-DE-0100

Bruce Whittaker
DDES/LUSD
Prel. Review Engineer
MS OAK-DE-0100

NOTICE OF RIGHT TO APPEAL

In order to appeal the decision of the Examiner, written notice of appeal must be filed with the Clerk of the King County Council with a fee of \$250.00 (check payable to King County Office of Finance) ***on or before June 23, 2004***. If a notice of appeal is filed, the original and six (6) copies of a written appeal statement specifying the basis for the appeal and argument in support of the appeal must be filed with the Clerk of the King County Council ***on or before June 30, 2004***. Appeal statements may refer only to facts contained in the hearing record; new facts may not be presented on appeal.

Filing requires actual delivery to the Office of the Clerk of the Council, Room 1025, King County Courthouse, 516 3rd Avenue, Seattle, Washington 98104, prior to the close of business (4:30 p.m.) on the date due. Prior mailing is not sufficient if actual receipt by the Clerk does not occur within the applicable time period. The Examiner does not have authority to extend the time period unless the Office of the

Clerk is not open on the specified closing date, in which event delivery prior to the close of business on the next business day is sufficient to meet the filing requirement.

If a written notice of appeal and filing fee are not filed within fourteen (14) calendar days of the date of this report, or if a written appeal statement and argument are not filed within twenty-one (21) calendar days of the date of this report, the decision of the hearing examiner contained herein shall be the final decision of King County without the need for further action by the Council.

MINUTES OF THE MAY 18, 2004, PUBLIC HEARING ON DEPARTMENT OF
DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. L03ALT04.

Stafford L. Smith was the Hearing Examiner in this matter. Participating in the hearing were Kim Claussen, Laura Casey and Bruce Whittaker, representing the Department; and Tom Barghausen, representing the Applicant.

The following exhibits were offered and entered into the record on May 18, 2004:

- Exhibit No. 1 DDES File No. L03ALT04
- Exhibit No. 2 DDES Preliminary Report dated May 18, 2004
- Exhibit No. 3 Application received December 18, 2003
- Exhibit No. 4 Environmental Checklist received March 18, 2004
- Exhibit No. 5 Declaration of Non-significance dated March 19, 2004
- Exhibit No. 6 Affidavit of Posting indicating February 16, 2004 as date of posting and February 18, 2004 as the date the affidavit was received by DDES
- Exhibit No. 7 Plat Map dated March 18, 2004
- Exhibit No. 8 Ordinance 14775
- Exhibit No. 9 Assessors Map – SW 3-22-05
- Exhibit No. 10 Record Plat Map – Jerry's Place
- Exhibit No. 11 Examiners Report for Jerry's Place dated June 12, 2000
- Exhibit No. 12 Jerry's Place – Approved Engineering Plans
- Exhibit No. 13 Photographs taken by Bruce Whittaker Showing the Wetland Buffer Outside of Jerry's Place
- Exhibit No. 14 Sketch of Proposed Wall

The following exhibit was entered into the record on May 20, 2004:

- Exhibit No. 15 Letter to the Hearing Examiner from Thomas Barghausen dated May 20, 2004

The following exhibit was entered into the record on May 27, 2004:

- Exhibit No. 16 Memorandum to the Hearing Examiner from Kim Claussen dated May 27, 2004